

REMARKS

Claims 17 and 21-42 are now in this application. Claims 26 and 27 are withdrawn from consideration. Claims 17 and 18 are rejected. Claims 17, 21-25 and 28-39 are rejected. Claims 1-16 and 18-20 are previously cancelled. Claims 17, 21-25, 28-33 and 37-39 are amended herein to address matters of form unrelated to substantive patentability issues. Claims 40-42 are added.

Applicant herein traverses and respectfully requests reconsideration of the rejection of the claims cited in the above-referenced Office Action.

Claims 17, 21-25 and 28-39 are rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the enablement requirement. Applicant herein respectfully traverses these rejections.

The determination of enablement turns on whether the specification contains a sufficient disclosure to enable one skilled in the art to practice the claimed invention without the exercise of undue experimentation.

The above cited Office Action states that it is unclear why an animal would be relatively more likely to access the animal access region and relatively less likely to access an animal restricted region since an animal's actions are unpredictable and uncertain.

Applicant has explained extensively how animal predictability is provided in the response filed on May 19, 2008, with reference to specific disclosure in the specification. The Examiner has not provided any response to applicant's arguments, and simply reiterates the same position, without reasonable explanation or rebuttal. Applicant therefore repeats the arguments prior presented, and respectfully requests that the Examiner indicate, in a subsequent Office Action, why applicant's support from the disclosure for the claimed subject matter allegedly fails to provide enabling disclosure.

The plain answer as to why an animals behavior is other than unpredictable or uncertain according to the claimed invention, and one that is explained in great detail throughout the disclosure with many examples and illustrations, is that the structure employed for the toy used in accordance with the claimed method, makes the animal's behavior, at least to some extent, predictable. Applicant reproduces below an excerpt from the disclosure directed to a broad explanation of how this predictable behavior is elicited.

Briefly stated, a dog toy is comprised of structure presenting regions providing different degrees of animal interest and/or accessibility, such that there is a higher likelihood that a dog will retain

a particular part of the toy in its mouth apart from another region intended for grasping by the owner. A toy employing such concept will find application in various modes of play, including tug activities between dog and owner, throwing and retrieval, and any other type of interaction in which the toy is held by the dog in its mouth and is thereby subjected to a depositing of saliva over the particular involved region of the toy and later subject to transfer to a user's hand. For purposes of disclosure, a region of the structure of the toy which a dog is more likely to bite and hold with its mouth by virtue of either enhanced sensory attraction and/or greater relative physical accessibility is referred to by the term "animal access region." Conversely, a region or regions which are less likely to be accessed by the pet during play by reason of less sensory appeal and/or structural inaccessibility are referred to by the term "animal restricted region." (See paragraph bridging pages 2 and 3)

Surely, the Examiner could not argue against the fact that, if a toy were to be created by coating portions of a structure with strips of bacon to create an animal access region, and coating other parts of the structure with a bitter tasting substance having an unpleasant smell to form an animal restricted region, a dog would, with a definite degree of predictably, grip the bacon-coated parts more frequently than the bitter-coated parts, preferring the taste of bacon to that of “bitter.” Applicant respectfully submits that since such a hypothetical toy would be included within the contemplated scope of the invention as claimed, and could certainly be practiced by one of ordinary skill in the art without undue experimentation, the enablement requirement is satisfied.

The fact that the animal may bite the toy in areas other than the animal access region, as additionally averred by the Examiner, does not negate the invention nor make it non-enabled, since the method is directed to inhibiting user hand contact with animal saliva, not necessarily eliminating it entirely. All that is essential to practice of the claimed method is that gripping of the animal restricted region in the mouth of the animal occurs with less frequency than gripping of the animal access region in the mouth during the course of play, so that saliva buildup on the toy is relatively less in the hand-holdable animal restricted region than on the toy portion in the animal access region.

Applicant respectfully submits that one skilled in the art would readily be able to implement the present invention as claimed without undue experimentation based on a reading of the specification as filed. Therefore, reconsideration of the rejection claims 17, 21-25 and 28-39 and their allowance are earnestly solicited.

Claims 17, 21-25 and 28-39 are rejected as indefinite under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter of the invention as a result of informalities stated in the Office Action. Applicant respectfully traverses these rejections.

Applicant has corrected the claims to appropriately address the noted phrases alleged to lack proper antecedent basis.

With respect to the remaining bases of the Examiners claim rejections as allegedly indefinite, the applicant respectfully disagrees. It is unclear to applicant precisely why the Examiner finds the noted terminology unclear, and indeed, the Examiner provides no explanation why straightforward terms which serve to clearly and unambiguously relate a functional attribute of one structural portion with another would be indefinite. For example, the terms “more” or “less” are properly used to define, for example, relative access to or interest in different regions of the toy. The basis for this relativity is explained very clearly in the disclosure, in a very definite manner. Moreover, the relativity of all terms is related in the claims to other claimed concrete terms as a proper reference for their relativity.

Therefore, based upon the foregoing, reconsideration of the rejection of claim 17, 21-25 and 28-39 and their allowance are respectfully solicited.

Claims 17, 21-25 and 28-39 are rejected under 35 U.S.C. § 102(b) as being anticipated by Niewolak (US 3,671,039). Applicant herein respectfully traverses these rejections.

For a rejection to be sustained under §102(b) each and every element of the claimed invention must be disclosed in the cited prior art reference. It is respectfully submitted that the cited reference fails to disclose at least the following features and elements of the present invention as noted herein.

All independent claims 17, 21 and 39 include a recitation generally directed to picking up/gripping a portion of the toy by the mouth of an animal or pet. Indeed, the subject matter of the present application is directed to inhibiting (at least reducing) contact of a user's hand with pet or animal saliva.

As stated in the first paragraph of the cited Niewolak reference, the "invention relates to stick and sphere games and, more particularly, to a game wherein a stick or bat is used to strike a sphere having capturing means which, if the sphere is struck properly, will capture a length of the bat and thereby be held to the bat." The reference is entirely devoid of any disclosure whatsoever to pets or other animals, and fails to teach or suggest any methodology for inhibiting human user hand contact with saliva deposited thereon by a pet or animal. The Office Action rejections appear

to rely on structural arguments alone, and these arguments cannot properly serve as a basis for rejecting the method claims of the present application which contain specific functional recitations in method claim format, and to which the application has been restricted by prior action.

In view of the above, it is respectfully submitted that claims 17, 21-25 and 28-39 particularly describe and distinctly claim elements not disclosed in the cited reference. Therefore, reconsideration of the rejections of claims 17, 21-25 and 28-39 and their allowance are respectfully requested.

It is further noted that the above discussed feature was present in the prior presented claims. As such, the present amendments cannot necessitate new grounds for rejection as the present rejections are respectfully submitted as failing to have been established in the initial instance. Accordingly, it is respectfully submitted that a next Office Action cannot be made final.

Claims 40-42 are added and are submitted as patentable over the cited art of record. Independent claim 41 recites subject matter directed to a method of reducing human user hand exposure to pet saliva of a pet deposited on a play toy during interactive play by the pet and the user, comprising providing the toy with an animal access region and an animal restricted region, said animal access region being comprised of at least one portion of the toy which the pet is more likely to bite and hold in a mouth of the pet by virtue of at least one of enhanced sensory attraction or

greater relative physical accessibility to the pet than said animal restricted region, said animal restricted region being comprised of at least another portion of the toy which is conversely less likely to be accessed by the pet during play by reason of at least one of less sensory appeal or structural inaccessibility to the pet than said animal access region, such that saliva of the pet is deposited to at least a lesser degree on said toy within said animal restricted region as compared to said animal access region when the toy is picked up in the mouth of the pet by a portion of the toy freely selected by the pet, and handling the toy following said toy being picked up in the mouth of the pet by grasping of the animal restricted region by the user such that exposure to saliva by the hand of the user is reduced which, among other features recited therein, is not believed disclosed in the cited art in the manner as claimed. Dependent claims 40 and 42 are patentable based on the subject matter recited therein in addition to the subject matter of claims 39 and 41.

Applicant respectfully requests a two (2) month extension of time to extend the response date to August 24, 2009. Please find Check No. 1414 in the amount of \$245 to cover the above fee which accompanies a Petition For Extension filed herewith.

Three (3) claims in excess of twenty are added. One (1) further independent claim in excess of three is added. Accordingly, please find Check No. 1415 in the amount of \$188 to cover the above extra claims fee.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lawrence I. Wechsler". The signature is fluid and cursive, with the first name "Lawrence" being more prominent and the last name "Wechsler" following in a similar style.

Lawrence I. Wechsler
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